

COTTONWOOD HEIGHTS

ORDINANCE NO. 187

AN ORDINANCE ENACTING AND CODIFYING CHAPTER 17.18 ("ILLICIT DISCHARGE AND CONNECTION") OF THE COTTONWOOD HEIGHTS CODE OF ORDINANCES

WHEREAS, effective 14 January 2005, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") adopted a code of ordinances (the "*Code*") for the City; and

WHEREAS, following adoption of the Code, the Council determined that further regulation of storm drainage and flood control development, groundwater source protection and related matters in the City was warranted and, consequently, amended the Code on 18 November 2008 to include Title 17, entitled "Storm Drainage and Flood Control Development; Ground Water Source Protection" ("*Title 17*"); and

WHEREAS, based on the requirements of federal and state law, the City's public works director and the City's engineer have recommended that Title 17 be amended to include new Chapter 17.18, entitled "Illicit Discharge and Connection" ("*Chapter 17.18*"); and

WHEREAS, the Council met in regular session on 13 March 2012 to consider, among other things, enacting and codifying new Chapter 17.18 as recommended; and

WHEREAS, after careful consideration of the recommendations of the City's public works director, the City engineer, and the requirements of federal and state law, the Council has determined that it is in the best interest of the health, safety and welfare of the citizens of the City to amend the Code by adopting and codifying new Chapter 17.18 as proposed;

NOW, THEREFORE, BE IT ORDAINED by the city council of the city of Cottonwood Heights as follows:

Section 1. **Adoption and Codification of Chapter 17.18.** The Council hereby approves and adopts Chapter 17.18 in the form attached hereto, and hereby codifies the same as Chapter 17.18 of the Code; provided, however, that the city attorney, with such assistance as he may require from other city officers and staff, is authorized and directed without further council action to make such additional formatting and technical corrections to Chapter 17.18 as he may consider to be appropriate in connection with inclusion of Chapter 17.18 in the Code.

Section 2. **Action of Officers.** All actions of the officers, agents and employees of the City that are in conformity with the purpose and intent of this ordinance (this "*Ordinance*"), whether taken before or after the adoption hereof, are hereby ratified, confirmed and approved.

Section 3. **Severability.** It is hereby declared that all parts of this Ordinance are severable, and if any section, paragraph, clause or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect the remaining sections, paragraphs, clauses or provisions of this Ordinance.

Section 4. **Repealer.** All ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, hereby repealed.

Section 5. **Effective Date.** This Ordinance, assigned no. 187, shall take immediate effect as soon as it shall be published or posted as required by law and deposited and recorded in the office of the City's recorder, or such later date as may be required by Utah statute.

PASSED AND APPROVED this 13th day of March 2012.

COTTONWOOD HEIGHTS CITY COUNCIL



Linda W. Dunlavy, Recorder

By Kelvyn H. Cullimore, Jr.
Kelvyn H. Cullimore, Jr., Mayor

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the Recorder's office this 13th day of March 2012.

POSTED this 14 day of March 2012.

574926.1

Chapter 17.18

ILLICIT DISCHARGE AND CONNECTION

Sections:

- 17.18.010 Purpose.**
- 17.18.020 Definitions.**
- 17.18.030 Applicability.**
- 17.18.040 Administration.**
- 17.18.050 Minimum standards.**
- 17.18.060 Prohibitions.**
- 17.18.070 Illicit discharges.**
- 17.18.080 Notification of illicit discharge.**
- 17.18.090 Permits required for construction sites.**
- 17.18.100 Enforcement, violation and penalties.**
- 17.18.110 Bond**
- 17.18.120 Appeal.**

17.18.010 Purpose.

The purpose of this chapter is to protect the health, safety and welfare of the city, its residents, and downstream entities through the improvement of the storm drain portion of the city's storm water system by managing and controlling storm water runoff, protecting property, preventing polluted water from entering the city's storm water system and other receiving waters to the maximum extent practicable as required by federal and state law. The objectives of this chapter are:

- A. To minimize entrance of pollutants to the city's storm drain system;
- B. To prohibit illicit connections and discharges to the city storm drain system;
- C. To minimize increases in non-point source pollution caused by storm water runoff from development that would otherwise degrade local water quality;
- D. To reduce the amount of storm water runoff, soil erosion and non-point source pollution, wherever possible, through storm water management controls and to ensure that these management controls are properly maintained and pose no threat to public safety;
- E. To establish legal authority to carry out all inspection, surveillance, monitoring and enforcement procedures necessary to ensure compliance with this chapter; and
- F. To establish a penalty procedure for violation(s) of this chapter.

17.18.020 Definitions.

For purposes of this chapter, the following terms shall have the meanings indicated below:

A. "Authorized enforcement agent" means the director and/or any individual designated by the director or this chapter as an authorized enforcement agent under this chapter.

B. "Best management practices" or "BMPs" includes schedules of activities, practices, maintenance procedures, design standards, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly into the public waters. BMPs also include treatment requirements, operating procedures, educational activities, and practices to control plant site runoff spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

C. "City" means Cottonwood Heights, Salt Lake County County, Utah and its associated jurisdiction.

D. "Clean Water Act" means the federal Water Pollution Control Act enacted by Public Law 92-500 as amended by Public Laws 95-217, 95-576, 96-483, and 97-117, enacted at 33 U.S.C. § 1251 et seq., and any successors or amendments thereto.

E. "Construction activity" means activities subject to the National Pollutant Discharge Elimination System (NPDES) construction permits, including any construction project that will result in land disturbance of one acre or more, or will disturb less than one acre but are part of a larger common plan of development. Construction activities include activities such as clearing and grubbing, grading, excavating, and demolition.

F. "Conveyance system" means any channel or pipe for collecting and directing the storm water.

G. "Culvert" means a covered channel or pipe that directs water flow below the ground surface.

H. "Degradation" means: (1) (biological or chemical degradation)--the breakdown of chemical compounds into simpler substances, usually less harmful than the original compound, as with the degradation of a persistent pesticide. (2) (geological degradation)--wearing down by erosion; and (3) (water degradation)--the lowering of the water quality of a watercourse by an increase in the amount of pollutant(s).

I. "Department" means the city's public works department.

J. "Detention" includes temporary storage of a storm water runoff volume for subsequent release through use of, for example, detention basins as well as temporary detention in parking lots, depressed grassy areas, etc.

K. "Detention basin" means a depression to detain or slow down the flow of storm water until downstream facilities have sufficient flow capacity to handle the flow, through use of an inlet, an outlet, the storage basin itself, and piping between. A detention basin shall be designed and improved to be an asset to the neighborhood and community.

L. "Development" means any man-made change to the land, including site preparation, landscaping, filling, grading, paving, excavation, and construction of building(s) or other structures.

M. "Director" means the director of the department, or anyone designated by the city's manager to perform the responsibilities of the director under this chapter.

N. "Discharge" means the release of storm water or other substance from a conveyance system or storage container.

O. "Disturb" means to alter the physical condition, natural terrain, or vegetation of land by clearing, grubbing, excavating, filling, building, or other construction activity.

P. "Drainage" means the collection, conveyance, containment, and/or discharge of surface and storm water run-off.

Q. "Equivalent Residential Unit" or "ERU" means a configuration of development, or impervious surfaces on a parcel, contributing runoff to the city's stormwater system or which represents the estimated use of the system that is approximately equal to that contributed by a single-family residential parcel.

R. "Erosion" means the wearing away of land surface by wind, water, ice, gravity, or mechanical processes, including vehicular traffic. Erosion occurs naturally from weather or runoff but can be intensified by land clearing practices related to farming, residential or industrial development, road building, clearing of vegetation, or recreational activities such as OHV use, hiking, equestrian use, etc.

S. "Excavation" means any man-made cut, cavity, trench, or depression in the earth's surface formed by earth removal.

T. "Fill" means a deposit of earth material placed by artificial means.

U. "Grading" means the cutting and/or filling of the land surface to a desired slope or elevation.

V. "Illegal discharge" means any direct or indirect non-storm water discharge to the storm drain system, except discharges from fire fighting activities and other discharges exempted in this chapter.

W. "Illicit connection" means any physical connection to a publicly maintained storm drain system (1) allowing discharge of non-storm water which has not been permitted by the public entity responsible for the operation and maintenance of the system, or (2) allowing discharge of storm water in a manner that does not meet the current standards of the public entity responsible for the operation and maintenance of the system.

X. "Includes" or "including" means that the listed items are not an exclusive, comprehensive list, but may include other, non-listed items.

Y. "Infiltration" means the downward movement of water from the surface to the subsoil. The infiltration capacity is expressed in terms of inches/hour.

Z. "Inlet" means an entrance into a ditch, culvert, storm drain, or other waterway.

AA. "Mulch" means a natural or artificial layer of plant residue or other materials covering the land surface which conserves moisture, holds soil in place, aids in establishing plant cover, and minimizes temperature fluctuations.

BB. "Non-point source" means pollution caused by diffuse sources such as agricultural or urban run-off, rather than from a single location such as a pipe.

CC. "NPDES" means the National Pollutant Discharge Elimination System, the EPA's program to control the discharge of pollutants to waters of the United States.

DD. "NPDES permit" means an authorization, license, or equivalent control document issued by EPA or an approved state agency to implement the requirements of NPDES.

EE. "On-site" means the entire property that includes the proposed development.

FF. "Person" means any natural person, business entity or other responsible party or enterprise.

GG. "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, platform, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

HH. "Plat" means a map or representation of a subdivision showing the division of a tract or parcel of land into lots, blocks, streets, or other divisions and dedications.

II. "Pollutant" means, generally, any substance introduced into the environment that adversely affects the usefulness of a resource, including paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

JJ. "Receiving waters" means bodies of water or surface water systems that receive water from upstream constructed (or natural) systems.

KK. "Retention" means the holding of run-off in a basin without release except by means of evaporation, infiltration, or emergency bypass.

LL. "Riparian" means a relatively narrow strip of land that borders a stream or river.

MM. "Runoff" means that part of precipitation, snowmelt, or irrigation water that runs off the land into streams or other surface water, which may carry pollutants from the air and land into the receiving waters.

NN. "Source control" means a practice or structural measure to prevent pollutants from entering storm water runoff or other environmental media.

OO. "State construction storm water permit" means a state-required permit issued by the Utah State Division of Water Quality to any person or business that intends to disturb more than one acre of real property.

PP. "Storm drain inlet" means a slotted opening leading to an underground pipe or open ditch for carrying surface runoff.

QQ. "Storm drain system" means a system of surface and underground conveyance, consisting of curb and gutter, street surface, inlet and clean-out boxes, piping, open channels and detention basins, ditches, channels, storm drains, retention basins, owned and operated by the city or private owners, which is designed and used to convey or collect storm water.

RR. "Storm water" includes rainfall runoff, snow melt runoff, and drainage, but excludes infiltration.

SS. "Storm Water Pollution Prevention Plan" or "SWPPP" means a document which describes the BMPs and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to storm water, storm water conveyance systems, and/or receiving waters. This plan must be prepared prior to obtaining a general state construction storm water permit.

TT. "Street" includes the entire area of the right-of-way, whether public or private, including curb, gutter, sidewalk, drive approaches, park strips, and surface area.

UU. "Waters of the United States" means surface watercourses and water bodies as defined in Title 40, Part 122.2 of Code of Federal Regulation (CFR), or any successors or amendments thereto, including all natural waterways and definite channels and depressions in the earth that may carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons.

VV. "Wetlands" means an area that is regularly saturated by surface or ground water and subsequently characterized by a prevalence of vegetation that is adapted for life in saturated soil conditions, including swamps, bogs, marshes, and estuaries.

17.18.030 Applicability.

This chapter shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agent.

17.18.040 Administration.

Except as otherwise expressly provided in this chapter, the department shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the authorized enforcement agent may be delegated by the director or the city's manager to persons or entities acting in the beneficial interest of or in the employ of the department or the city.

17.18.050 Minimum standards.

The standards set forth in, or promulgated under, this chapter are minimum standards. Consequently, this chapter does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

17.18.060 Prohibitions.

A. No vehicle shall be driven or moved on any street, highway or other public place unless such vehicle is constructed, loaded or covered so as to prevent any of its load from dropping, sifting, leaking or otherwise escaping, except:

- (1) Sand or other substances may be dropped for the purpose of securing traction; and

(2) Water or other substances may be sprinkled on a roadway in connection with cleaning or maintaining such roadway for the travel or use of the public.

B. No vehicle loaded with garbage, waste paper, ashes, refuse, trash, rubbish, waste, lawn cuttings, tree limbs, wire, paper, cartons, boxes, glass, solid waste, scrap metal, or any other material of an unsanitary nature that is susceptible to blowing or bouncing from a moving vehicle shall be driven or moved on any street or other public place unless the load is covered with a sufficient cover to prevent any part of the load from spilling onto the street or other public place.

C. No person shall operate any vehicle so as to track or drop mud, stones, dirt, concrete, gravel or other similar material onto any street or public place.

(1) It shall be the duty of the driver of a vehicle who unlawfully drops or deposits mud, stones, concrete, gravel or other similar material or permits the load or any portion thereof to be dropped or deposited upon any street or other public place to immediately remove the same or cause it to be removed.

(2) It also shall be the duty of the driver of any vehicle to clean the tires and vehicle undercarriage of dirt or debris before the vehicle enters onto a paved surface public right of way.

(3) The owner and the general contractor, if any, in charge of the job site from which the mud, dirt, or debris comes shall be jointly and severally liable with the driver of the vehicle for any violation of this subsection (C).

D. No person shall discharge waste or excess concrete or concrete truck rinse water except into pre-approved discharge facilities or designated areas.

E. No person shall stockpile construction or yard improvement materials or debris in the street or in the gutter unless it is part of a city-approved clean-up program, or unless it is being stored in a self-contained storage unit that has been pre-approved by the department. This prohibition includes ramps being constructed for temporary access across the existing curb and gutter; stockpiling of topsoil or other fill material; and stockpiling of sand, gravel, landscape rock, bark, mulch or any other material that may be considered a source of pollution to the storm water system. Any exception to this prohibition must be expressly granted to the applicant in the approved SWPPP.

17.18.070 Illicit discharges.

No person shall discharge or cause to be discharged into the city storm drain system or watercourses any material other than storm water. Such prohibition includes pollutants and waters containing pollutants that cause or contribute to a violation of applicable water quality standards.

A. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (1) Water line flushing or other potable water sources;
- (2) Landscape irrigation or lawn watering;
- (3) Diverted stream flows;
- (4) Rising ground water;
- (5) Ground water infiltration to storm drains;
- (6) Uncontaminated pumped ground water;
- (7) Foundation or footing drains (not connected to floor drains);
- (8) Crawl space sump pumps;
- (9) Air conditioning condensation;
- (10) Springs;
- (11) Non-commercial washing of vehicles;
- (12) Natural riparian habitat or wetland flows;
- (13) Swimming pools (if de-chlorinated--typically less than one PPM chlorine);

- (14) Fire fighting activities, and any other water source not containing pollutants; and
- (15) Discharges specified in writing by the authorized enforcement agent as being necessary to protect public health and safety.

B. Dye testing is an allowable discharge, but requires a verbal notification to the authorized enforcement agent prior to the time of the test.

C. The prohibitions in this section shall not apply to any non-storm water discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided further that written approval has been granted for any discharge to the storm drain system.

D. This prohibition includes:

- (1) Illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection; and
- (2) Connections of sanitary sewer lines to the city's storm drainage system.

17.18.080 Notification of illicit discharge.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials which are resulting, or may result, in illegal discharges or pollutants into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services (9-1-1 or similar). In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person, by telephone or by facsimile no later than the next business day. Notifications in person, by telephone or by facsimile shall be confirmed by written notice addressed and mailed to the department within the next three business days.

17.18.090 Permits required for construction sites.

The following permits shall be required for construction sites, as applicable:

A. State construction storm water permit. Any person who will disturb one acre or more of ground, or will disturb less than one acre as part of a larger plan of development, shall obtain a state construction storm water permit from the Utah Division of Water Quality. A SWPPP must be prepared and kept on the construction site in connection with such permit, which shall include easements required to access and inspect the storm water treatment practices, to perform routine maintenance as necessary to ensure proper functioning of the storm water treatment practice, and to otherwise inspect access and inspect all related facilities. Where required by the city, a legally binding certificate specifying the parties responsible for the proper maintenance of all storm water treatment practices, and such other matters as the city reasonably may require under this title, shall be secured prior to issuance of any permits for land disturbance activities. Each SWPPP must (1) include at least three BMP's, (2) be approved by the department, and (3) meet the requirements of chapters 17.25 and 17.26 of this title. A copy of this permit, and payment of all required fees, shall be submitted to the city prior to the pre-construction meeting for the proposed development.

B. Stream alteration permit. Any person who will disturb any streambed or any riparian area equal to twice the full width of the streambank (up to 30 feet) shall obtain a stream alteration permit from the Utah Division of Water Rights. This permit may overlap the EPA 404 wetlands permit and the Salt Lake County flood control permit described below. A copy of this permit, and payment of all required fees, shall be submitted to the city prior to the pre-construction

meeting for the proposed development.

C. EPA 404 wetlands permit. This permit is applicable to all wetlands within a development, depending upon the presence of water, soil type, and vegetation as determined in a wetlands delineation report. All waters of the United States are affected to the normal high water mark. No fee is typically required for this permit, which is filed with the U.S. Army Corp of Engineers. This permit may overlap the stream alteration permit and/or the Salt Lake County flood control permit described in this section. A letter of non-regulated wetlands may be applicable. Any required mitigation must occur prior to recording a final plat for the development. A copy of this permit, and payment of all required fees, must be submitted to the city prior to the pre-construction meeting for the proposed development.

D. Salt Lake County flood control permit. Any person who will disturb any streambed or any riparian area equal to twice the full width of the streambank (up to 20 feet) shall obtain a flood control permit from the Salt Lake County Flood Control Department. This permit may overlap the EPA 404 wetlands permit and/or the stream alteration permit described above. A copy of this permit, and payment of all required fees, must be submitted to the city prior to the pre-construction meeting for the proposed development.

17.18.100 Enforcement, violation and penalties.

A. Stop work order. If any person violates this chapter, the department may issue a stop work order prohibiting any further performance or approval of work on the development until such time as the city determines that such violation has been fully resolved.

B. Additional remedies. In addition to its right to impose a stop work order under subsection (A), above, the city shall have the following nonexclusive remedies to enforce this chapter:

(1) Notice and order. Whenever the department finds that a person has violated a prohibition or failed to meet a requirement of this chapter, the department may order compliance by written notice of violation to the responsible person. Such notice may require, without limitation:

(a) The performance of monitoring, analyses, and reporting;

(b) The elimination of illicit connections or discharges and the immediate cessation of violating practices or operation;

(c) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;

(d) Reimbursement of all of the city's out-of-pocket costs in connection with such violation and its remediation;

(f) Implementation of source control or treatment BMPs; and

(g) The immediate removal of mud, dirt or debris left by any vehicle on a street that drains into the city's storm drain system.

(2) Nuisance abatement. The violation may also be declared and treated as a nuisance and enforced by any of the city's inspectors or enforcement officers. Each day of violation shall constitute a separate offense.

(3) Criminal penalties. Any intentional or reckless violation of this chapter is a Class B misdemeanor. Each day that such violation is committed, continued or permitted shall constitute a separate offense. City employees in the performance of their assigned duties shall be exempted from any such criminal penalties.

(4) Federal/state penalties. Violators of this chapter may also be subject to prosecution, fines and penalties from the State of Utah and/or the United States of America.

(5) Control measures. The city may install and/or maintain appropriate erosion and sediment control measures on any site if construction activity is commenced or continued without such measures having been installed or maintained as required by this chapter. Such work may be performed by city personnel or by a private contractor hired by the city. The property owner and the general contractor, if any, of the project shall be jointly and severally liable for any and all

expenses related to performing such work plus a 25% penalty charge. The city may assess said charges against any bond posted by the contractor and/or property owner.

17.18.110 Bond.

Each applicant shall post a bond at the time any permit for development or construction is issued for the purpose of ensuring compliance with the conditions of this chapter. The bonded amount shall be determined by the city department issuing the permit and may be included either as part of any performance or repair bond already required as a condition of permit approval or as a separate bond.

17.18.120 Appeals.

Any person aggrieved by the interpretation or application of this chapter may file a grievance with the director. Such grievance shall be in writing, shall provide a full factual background and an explanation of the basis of the grievance, and shall be filed within ten (10) working days after the decision or action being appealed. The director may solicit additional information concerning the grievance from the complainant, from city staff, or any other person. The director shall decide the appeal within ten (10) working days after the appeal is filed. If the complainant is not satisfied with the director's decision, the complainant may appeal to the city's manager or the manager's designee, following the same procedure as the director's grievance process. The manager's decision shall be final and binding on all parties, subject to the complainant's right to appeal such decision to Third District Court within 30 calendar days after the manager's decision.